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OFFICE OF PETITIONS

In re Application of :
Todd A. Brady :
Application No. 10/730,480 : DECISION ON
Filed: 1 November, 2004 : PETITION
Atty Docket No. 00-8-1387 :

This is a decision in reference to the petition filed on 1 November, 2004, under 37 CFR 1.10, which is treated as a petition under 37 CFR 1.53(e) requesting that the above identified application be accorded a filing date of 2 October, 2004.

The petition is dismissed.

On 1 October, 2002, the application was deposited, without drawings.

Accordingly, on 14 October, 2004, Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application, stating that the application had not been accorded a filing date because the application had been deposited without drawings. The Notice also stated that the oath or declaration was missing.

In response, on 1 November, 2004, petitioner filed the present petition, accompanied by seven (7) sheets of drawings, and an executed declaration.

Petitioner asserts that the drawings were filed on 2 October, 2004. In support, petitioner has provided a copy of Express Mail customer label No. EV192360186US showing a "date-in" of 2 October, 2004.

Petitioner's evidence has been considered, but is not persuasive.

No drawings for this application were filed on 2 October, 2004, since no drawing figures were received on that date. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that petitioner believes the drawings were filed on 2 October, 2004, is not more persuasive than the actual papers shown to have been received in the official file.

Petitioner has not provided sufficient evidence to link the Express Mail number found on the Express Mail label to the drawings deposited on 1 November, 2004. If petitioners have such evidence, such as a transmittal sheet filed with the drawings itemizing the filing of the drawings and containing the Express Mail label number, such evidence should be filed with a renewed petition.

The application will be processed with a filing date of 1 November, 2004, using the specification, including the claims, and seven (7) sheets of drawings filed on that date.

As no fee is due for petitions filed under 37 CFR 1.10, the petition fee will be refunded to counsel's deposit account, No. 50-0703.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
 220 20th Street S.
 Customer Window, Mail Stop Petition
 Crystal Plaza 2, Lobby, Room 1B03
 Arlington, VA 22202

The application is being referred to the Office of Initial Patent Examination for further processing with a filing date of 1 November, 2004 using the originally deposited application papers and the drawings filed on 1 November, 2004.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

A handwritten signature in black ink, appearing to read "D Wood". The signature is stylized with a large, looped "D" and a cursive "Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions